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(415) 393-2070

Mr. Jonathan D. Levy  
Economist  
Federal Communications Commission  
Office of Plans and Policy  
Washington, D.C. 20554

**Inquiry into Sports Programming Migration  
PP Docket No. 93-21**

Dear Mr. Levy:

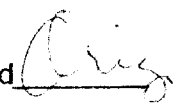
At your request we enclose copies of our opening and closing briefs on our motion for summary judgment in the Pappas case plus the declarations and exhibits submitted with those briefs.

Sincerely,

  
John N. Hauser

Enclosures

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Attorneys for Defendant  
The Pacific-10 Conference

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ORIGINAL  
AUG 16 1993  
CLERK, U. S. DIST. COURT  
Eastern District of California

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PAPPAS TELECASTING, INC. a  
California corporation, and as  
Public Trustee,

Plaintiff,

v.

PRIME TICKET NETWORK, a California  
Limited Partnership, CVN, INC.,  
The PACIFIC-10 CONFERENCE,  
a California non-profit association,  
CAPITAL CITIES/ABC, INC.,  
a New York corporation, and DOES 1  
through 20, inclusive,

Defendants.

No. CV-F 92-5589-OWW  
NOTICE OF MOTION AND  
MOTION FOR SUMMARY  
JUDGMENT

Date: September 13, 1993  
Time: 10:00 a.m.  
Place: Room 5104  
Honorable Oliver W. Wanger

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8/30 - Serve DPP by HAND  
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TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

At 10:00 a.m. on September 13, 1993, or as soon

thereafter as this matter may be heard, defendant the  
Pacific-10 Conference will move for summary judgment on all of  
plaintiff's claims on the grounds that plaintiff cannot prove  
that a triable issue of fact exists as to any of them. Pappas  
cannot as a matter of law prove that the Pac-10 deprived it of  
any economic benefit, nor that any action by the Pac-10 injured

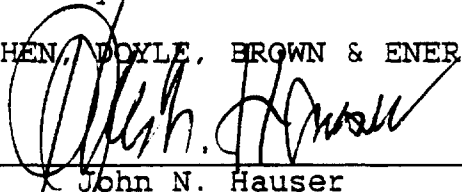
1 competition under the antitrust laws. The Pac-10's motion will  
2 be brought under Federal Rule of Civil Procedure 56, and will  
3 be based on this notice, the accompanying statement of material  
4 facts, memorandum of points and authorities and declarations,  
5 and such oral argument and other matters as the Court may  
6 consider.

7  
8 Dated: August 13, 1993.

9 Respectfully submitted,

10 McCUTCHEN, DOYLE, BROWN & ENERSEN

11  
12 By

  
13 John N. Hauser  
14 Attorneys for Defendant  
15 The Pacific-10 Conference  
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7

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 PAPPAS TELECASTING, INC. a  
California corporation, and as  
12 Public Trustee,

13 Plaintiff,

14 v.

15 PRIME TICKET NETWORK, a California  
Limited Partnership, CVN, INC.,  
16 The PACIFIC-10 CONFERENCE,  
a California non-profit association,  
17 CAPITAL CITIES/ABC, INC.,  
a New York corporation, and DOES 1  
18 through 20, inclusive,

19 Defendants.  
20

No. CV-F 92-5589-OWW

STATEMENT OF MATERIAL  
FACTS IN SUPPORT OF THE  
PACIFIC-10 CONFERENCE'S  
SUMMARY JUDGMENT MOTION

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*Am*  
Attorney, whose initial  
review, has reviewed  
applicable court rule.  
has verified that the  
facts are correct.

21 Pursuant to Local Rule 260(a), the Pacific-10  
22 Conference submits this statement of material facts relied upon  
23 in support of its motion for summary judgment.

24 / / /

25 / / /

26 / / /

27

28

1           A.    Plaintiff's State Law Tort Claims

2    Material Fact

Evidentiary Support

3    1.   No one involved in the  
4       discussions between FSU  
5       and either WSU or OSU  
6       concerning the telecasts  
7       of the 1991 football games  
8       between FSU and those  
9       Pac-10 schools ever  
10      mentioned, much less  
11      agreed, that the telecasts  
12      were to be live.

Declaration of Scott Johnson  
¶ 2; Declaration of Harold  
Gibson ¶¶ 2 & 3; Declaration  
of Mike D. Corwin ¶¶ 2 & 3.

13   2.   The representatives of  
14       WSU and OSU had no  
15       reason to believe, and did  
16       not believe, that FSU  
17       wished to arrange for live  
18       telecasts; rather, they  
19       believed that FSU sought  
20       delayed telecasts.

Declaration of Scott Johnson  
¶ 2; Declaration of Harold  
Gibson ¶¶ 2 & 3; Declaration  
Mike D. Corwin ¶¶ 2 & 3.

21           B.    Plaintiff's Antitrust Claims

22    Material Fact

Evidentiary Support

23    1.   Pappas' antitrust claims  
24       are based on its inability  
25       to telecast, live, in the  
26       Fresno area one college  
27       football game on each of  
28       two Saturdays in 1991.

Amended Complaint ¶¶ 64-70.

29    2.   On those two Saturdays,  
30       sixteen live college  
31       football games, plus four  
32       tape delayed games, were  
33       televised in the Fresno  
34       area. This amounted to 56  
35       hours of live college  
36       football. There were two,  
37       three, or even four games  
38       to choose from at almost  
39       all times on those two  
40       Saturdays.

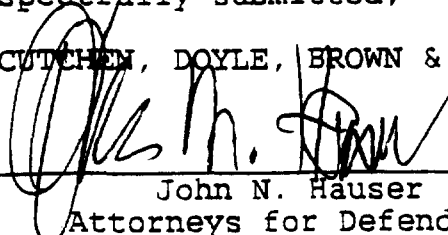
Declaration of Frank M.  
Hinman, Exhibit A.

41   Dated: August 13, 1993.

Respectfully submitted,

McCUTCHEN, DOYLE, BROWN & ENERSEN

By

  
John N. Hauser  
Attorneys for Defendant  
The Pacific-10 Conference

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through 20, inclusive,

Defendants.

No. CV-F 92-5589-OWW

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
THE PACIFIC-10 CONFERENCE'S  
SUMMARY JUDGMENT MOTION

Date: September 13, 1993  
Time: 10:00 a.m.  
Place: Room 5104  
Honorable Oliver W. Wanger

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1           This case is about a miscommunication that allegedly  
2       deprived plaintiff of the ability to telecast one college  
3       football game live in the Fresno area on each of two Saturdays  
4       in 1991, when sixteen other games, 56 hours' worth, were shown  
5       live on those two days. No one involved here is responsible  
6       for that miscommunication, and were it not for that  
7       miscommunication there would be no case at all. Nonetheless,  
8       Pappas has dressed these facts up in ill-fitting tort and  
9       antitrust garb to try to make this case into something it's  
10      not. This simple miscommunication does not give rise to a tort  
11      claim, nor do the facts here allow resort to the antitrust laws  
12      in any event, because those laws protect competition, not  
13      competitors. Pappas cannot prove competitive injury, because  
14      competition for the sale of televised college football, in  
15      Fresno and elsewhere, is robust. Plaintiff's claims are  
16      factually and legally deficient, and should be dismissed.<sup>1</sup>

17           I.     BACKGROUND

18                A.   The Pacific-10 Conference

19                The Pac-10 is an unincorporated association of ten  
20      West Coast universities. Declaration of Thomas C. Hansen  
21      ("Hansen Decl.") ¶ 2. One of its primary goals is to balance  
22      the scholastic and athletic experiences of the student-athletes

23      / / /

24      / / /

---

25  
26      <sup>1</sup> The Pac-10 understands that Pappas is in the process of  
27      amending its Complaint a second time in response to the Court's  
28      August 2 Order. This motion rests on different grounds from  
    those before the Court on Prime Ticket's Motion to Dismiss, and  
    the substantive deficiencies discussed below will not be cured  
    by any jurisdictional amendments Pappas may make.

1 at its member institutions. Id. Members of the Pac-10 compete  
2 in a wide variety of intercollegiate athletics, including men's  
3 football. A football season consists of approximately  
4 11 games, approximately seven of which are played against other  
5 Pac-10 members. At the end of each season, the Pac-10 member  
6 with the best intraconference record plays the winner of the  
7 Big Ten Conference in the Rose Bowl. Other Pac-10 teams are  
8 eligible to be chosen to compete in other post-season bowl  
9 games. Pac-10 teams compete vigorously for the chance to play  
10 in the Rose Bowl and other bowl games.

11 B. The Importance Of Television To Pac-10 Members

12 Having their teams' football games televised on a  
13 national or regional basis is important to the Pac-10's members  
14 for several reasons. First, it increases the exposure of both  
15 the team and the university, and helps the school recruit  
16 quality students, including student-athletes. Hansen Decl.  
17 ¶ 3. The universities also gain revenue from the sale of  
18 television rights, which allows them to finance further  
19 athletic and educational endeavors. Id. In addition,  
20 television exposure maintains alumni involvement, both  
21 financially and otherwise, with the universities, to the  
22 benefit of current students. Id.

23 To obtain these benefits, Pac-10 members must compete  
24 with universities across the country for national and regional  
25 television exposure. In particular, Pac-10 members compete  
26 with members of the College Football Association ("CFA"), which  
27 comprises 67 Division I-A colleges and universities with major  
28 football programs. The CFA currently has contracts with ABC

1 and ESPN for the broadcast of its members' football games.  
2 Hansen Decl. ¶ 5. Another powerful competitor in the  
3 television market is the University of Notre Dame, which has a  
4 strong nationwide following and enjoys great fan interest in  
5 its football games. Because of its unique popularity, Notre  
6 Dame currently has a contract with NBC for the broadcast of its  
7 football games. Id.

8 C. The Pac-10's Television Contracts

9 One way in which Pac-10 members compete for television  
10 exposure is by joining together as a conference to market the  
11 television rights to their home football games. Hansen Decl.  
12 ¶ 6. The Pac-10, along with the Big Ten Conference ("Big  
13 Ten"), currently has a contract with ABC for televising Pac-10  
14 and Big Ten regular season home games. Hansen Decl. ¶ 3. The  
15 Pac-10 also has a contract with Prime Ticket Network, Inc.  
16 ("PTN"), covering football and some other Pac-10 home sporting  
17 events. Id.

18 Selling television rights as a conference allows the  
19 Pac-10 to take advantage of efficiencies that would not  
20 otherwise exist. Declaration of Janusz A. Ordover ("Ordover  
21 Decl.") ¶ 10. In essence, the Pac-10 creates a new product --  
22 a whole season of football games, consisting of one or more  
23 games per week -- that it markets to each broadcaster. Hansen  
24 Decl. ¶ 6. This allows the broadcaster to: (1) wait until  
25 shortly before each week's games to decide which Pac-10 home  
26 game to televise; (2) promote more effectively its "series" of  
27 Pac-10 football, just as it promotes other series it  
28 broadcasts; and (3) save on transactions costs because it is

1 able to negotiate with the Pac-10 schools as a group, rather  
2 than individually. Ordover Decl. ¶ 10. Each of these factors  
3 makes the Pac-10's package of games more attractive to  
4 broadcasters, and allows the Pac-10 to compete more effectively  
5 against other sellers of college football. Id. ¶ 29.

6 The contracts with ABC and PTN contain certain  
7 provisions for time period exclusivity. See Ordover Decl.  
8 ¶¶ 16-20. When ABC televises a Pac-10 or Big Ten home game, no  
9 other telecast of a Pac-10 or Big Ten home game may be shown,  
10 except that a 45-minute overlap is allowed at both the  
11 beginning and end of the ABC game. Hansen Decl. ¶ 7. The  
12 Pac-10's agreement with PTN contains similar provisions for  
13 Pac-10 home games only. Id. ABC and other broadcasters of  
14 college football demand such exclusivity provisions to protect  
15 their investments, and the CFA and other sellers of college  
16 football provide them. Id. ¶ 8; Ordover Decl. ¶ 20. Thus, the  
17 Pac-10 has found it necessary to agree to such provisions to be  
18 competitive in the television market. Id.

19 Nonetheless, the Pac-10 insisted that the exclusivity  
20 provisions be sufficiently limited to allow for additional  
21 television or cable exposures of its members' football games.  
22 Ordover Decl. ¶¶ 21-22. Thus, in addition to the games  
23 televised by ABC and PTN, individual Pac-10 members can allow  
24 their home games to be shown live or delayed at times that do  
25 not conflict with the ABC or PTN telecasts. Id. ¶ 22; Hansen  
26 Decl. ¶ 8. Televising games on a delayed basis is especially  
27 common where there is a dedicated local audience for them.  
28 Declaration of James Livengood ("Livengood Decl.") ¶ 2;



1 Declaration of Dutch Baughman ("Baughman Decl.") ¶ 2. Also,  
2 the ABC and PTN contracts impose no restriction on the  
3 televising of its member institutions' away games. Hansen  
4 Decl. ¶ 7. Finally, while it often is beneficial to appear on  
5 national or regional telecasts, Pac-10 members sometimes feel  
6 that the inconvenience and expense of appearing on television  
7 is not worthwhile. Id. ¶ 8.

8 D. The Pac-10's Television Exposure

9 The Pac-10's goal in entering into the television  
10 contracts with ABC and PTN is to achieve broad national and  
11 regional coverage of the football games played by its member  
12 institutions, and it has succeeded. The Pac-10's contract with  
13 ABC that was in effect in 1991 requires the network to telecast  
14 at least 15 live "television exposures" (defined as either a  
15 Pac-10 or Big Ten home game telecast nationally or one or more  
16 such games telecast regionally to over 50% of the United States  
17 television households), consisting of at least 23 Pac-10 or Big  
18 Ten home games, per season. Hansen Decl. ¶ 4. The Pac-10's  
19 contract with PTN provides for the regional cablecast of an  
20 additional 12 Pac-10 home games per year. Id. During the 1991  
21 football season, pursuant to its television agreements,  
22 25 Pac-10 home games (plus 13 Big Ten home games) were  
23 televised live to a viewing audience of 40 million people. Id.

24 E. The FTC Investigation

25 In early 1990, the Federal Trade Commission began an  
26 investigation of the CFA, the Pac-10 and other conferences and  
27 entities. Hansen Decl. ¶ 9, Ex. A. In particular, the FTC was  
28 concerned with the effect on competition in what it called the

1 televised college football market of agreements between  
2 broadcasters and the CFA, as well as the Big Ten/Pac-10, for  
3 the acquisition of college football telecast rights. Id.;  
4 Ordover Decl. ¶ 8. At that time, the Pac-10 had television  
5 contracts with ABC and PTN which were substantively identical  
6 to those that existed during the 1991 season. Hansen Decl.  
7 ¶ 9. The FTC later dropped its investigation of the Pac-10/Big  
8 Ten, recognizing that the Pac-10 television agreements did not  
9 threaten injury to competition. Ordover Decl. ¶¶ 15 & 23. By  
10 contrast, the FTC filed a complaint against the CFA. Id.

11 F. The Present Dispute

12 The events underlying this case took place in 1991.  
13 That year, the Fresno State University ("FSU") football team  
14 was scheduled to play non-conference away games against two  
15 Pac-10 members, Washington State University ("WSU") and Oregon  
16 State University ("OSU") on September 14 and 21, respectively.  
17 FSU evidently had a contract with KMPH, a local Fresno  
18 television station, to telecast in the Fresno area a number of  
19 FSU football games during the 1991 season, including the OSU  
20 and WSU games. Complaint ¶¶ 32 & 33. KMPH had no contract,  
21 nor any communications, with either WSU or OSU. Declaration of  
22 Harold Gibson ("Gibson Decl.") ¶ 3; Declaration of Mike D.  
23 Corwin ("Corwin Decl.") ¶ 4.

24 In June 1991, Scott Johnson, the Assistant Athletic  
25 Director for Communications at FSU, telephoned Harold Gibson  
26 and Mike Corwin, Assistant Athletic Directors for WSU and OSU,  
27 respectively, to arrange a telecast of the football games.  
28 Johnson did not say in either conversation that he sought a

1 live telecast. All parties, except plaintiff, who wasn't  
2 there, agree about that.<sup>2</sup> Declaration of Scott Johnson  
3 ("Johnson Decl.") ¶ 2; Gibson Decl. ¶ 2; Corwin Decl. ¶ 2. In  
4 addition, both Gibson and Corwin have testified in their  
5 declarations, and Johnson does not dispute, that they had no  
6 reason to believe, and did not believe, that Johnson proposed a  
7 live telecast. Johnson Decl. ¶ 2; Gibson Decl. ¶ 3; Corwin  
8 Decl. ¶ 3. Because the majority of their schools' games for  
9 which they independently make televisions arrangements are  
10 shown on a delayed basis, both Corwin and Gibson had every  
11 reason to believe, and did believe, that Johnson proposed a  
12 delayed telecast. Gibson Decl. ¶ 2; Corwin Decl. ¶ 2.

13 On June 26, 1991 Johnson sent letters to both Corwin  
14 and Gibson to confirm their agreements. Neither letter  
15 mentioned a live telecast.<sup>3</sup> See Gibson Decl. Ex. A; Corwin  
16 Decl. Ex. A. In fact, no one at WSU or OSU had any idea that  
17 FSU envisioned a live telecast until mid-August, 1991 when Hal

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18  
19 <sup>2</sup> It is also interesting to note that not even Pappas'  
20 original Complaint alleged agreements for live telecasts.  
21 Compare Complaint ¶¶ 32 & 33 with Amended Complaint ¶¶ 50 & 51.

22 <sup>3</sup> While Johnson's letter was the only written communication  
23 between FSU and OSU concerning the proposed telecast, Fresno  
24 State also had signed a contract with WSU in January of 1988  
25 concerning the September 14, 1991 football game. That contract,  
26 which FSU drafted, provided that Washington State would provide  
27 adequate facilities "to originate one (1) live radio broadcast  
28 and one (1) delayed telecast so as to enable [FSU] to fulfill its  
contractual obligations . . . ." Livengood Decl. ¶ 3, Ex. A  
(emphasis added). The contract further provided that a live  
telecast was conditioned on "the prior written consent" of the  
home team's athletic director. All parties agree that no such  
consent was either sought or given. Johnson Decl. ¶ 2; Livengood  
Decl. ¶ 3. This contract further supports the unanimous  
testimony of all parties involved that no live telecast was  
agreed upon, or even discussed.

1 Cowan, OSU's sports information director, received a "detail"  
2 of the proposed telecast from Howard Zuckerman, KMPH's  
3 producer, which indicated the telecast was to be live.  
4 Declaration of Hal E. Cowan ("Cowan Decl.") ¶ 2. Cowan alerted  
5 Corwin, who called the Pac-10, and was told that the game's  
6 5:00 start time conflicted with the September 21 game selected  
7 by Prime Ticket, California at Arizona, which was to begin at  
8 7:00. Corwin Decl. ¶ 3. Corwin reported this to Cowan, who  
9 then informed Johnson that no live telecast was possible at  
10 5:00. Cowan Decl. ¶ 2. A few days before the game, Gary  
11 Cunningham, FSU's Athletic Director, called Dutch Baughman,  
12 OSU's Athletic Director, and requested a change in the start  
13 time, but Baughman told him it was too late to notify  
14 ticketholders of a change. Baughman Decl. ¶ 3.

15 Had Johnson notified OSU in June that FSU proposed a  
16 live telecast, it might have been possible to move the kickoff  
17 to accommodate it.<sup>4</sup> Baughman Decl. ¶ 3. In any event, the  
18 decision whether to do so would have been OSU's alone; the  
19 Pac-10 would not have been involved. Id.; Hansen Decl. ¶ 11.

20 Similar events occurred shortly before the FSU-WSU  
21 game, when the Pac-10 called Gibson to ask if WSU had agreed to  
22 a live telecast. Gibson said that he had not. Gibson Decl.  
23 ¶ 3. Jim Livengood, WSU's Athletic Director, then called  
24 Cunningham, an old friend, and said there must have been a  
25

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26 <sup>4</sup> The FSU-OSU game was originally scheduled to start at  
27 5:00, and could have been shown live starting at any time  
28 between 3:15 and 4:15. Hansen Decl. ¶ 11. The FSU-WSU game,  
originally scheduled to start at 2:00, could have been telecast  
live starting at any time up to 12:45 or after 6:15. Id.

1 misunderstanding, and that no live telecast was possible at  
2 2:00, when the game was scheduled, because of the 3:30 Stanford  
3 vs. Arizona game selected by Prime Ticket for telecast on the  
4 14th. By that time, it was too late to move the kickoff,  
5 although the Pac-10's contracts would not have precluded doing  
6 so had WSU had adequate notice. Livengood Decl. ¶ 3. Again,  
7 that decision would have been WSU's alone. Hansen Decl. ¶ 11.

8 Because of the above miscommunication, which was not  
9 discovered until the last minute, and because Pappas chose not  
10 to do a delayed telecast, KMPH did not telecast either game.  
11 This lawsuit followed.

12 II. ARGUMENT

13 This case arose because, as a result of the above  
14 misunderstanding, which the Pac-10 had nothing to do with,  
15 plaintiff was unable to televise, live, two football games.  
16 Every business disappointment does not create a tort cause of  
17 action. Moreover, courts have criticized attempts to turn a  
18 simple commercial dispute into an antitrust case:

19 Plainly, not all competitive conduct that injures  
20 another allows resort to laws regulating trade.  
21 Antitrust law is not intended to be as available as  
22 an over-the-counter cold remedy, because were its  
heavy power brought into play too readily it would  
not safeguard competition, but destroy it.

23 Capital Imaging Associates, P.C. v. Mohawk Valley Medical  
24 Associates, Inc., 1993 WL 196067, \*1 (2d Cir. (N.Y.)); see also  
25 Ball Memorial Hosp., Inc. v. Mutual Hosp. Ins., Inc., 784 F.2d  
26 1325, 1338 (7th Cir. 1986) ("antitrust laws are not balm for  
27 rivals' wounds"); Ass'n of Independent T.V. v. College Football  
28 Ass'n, 637 F. Supp. 1289, 1292 n.2 (W.D. Okla. 1986)

1 ("Antitrust actions are often borne of commercial  
2 disappointment rather than a legal wrong."). Plaintiff cannot  
3 as a matter of law prove its state law tort claims, much less  
4 its antitrust claims.

5 A. The Summary Judgment Standard

6 Summary judgment is appropriate if the moving party  
7 demonstrates the absence of any disputed issue of material  
8 fact, and the non-moving party fails to show that such a  
9 dispute exists. Fed. R. Civ. P. 56(c); Celotex Corp. v.  
10 Catrett, 477 U.S. 317, 323 (1986). The party opposing summary  
11 judgment "must do more than simply show that there is some  
12 metaphysical doubt as to the material facts . . . , [it] must  
13 come forward with 'specific facts showing that there is a  
14 genuine issue for trial.'" Matsushita Elec. Indus. Co. v.  
15 Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (citation  
16 omitted). As shown below, Pappas cannot raise a genuine issue  
17 of material fact with respect to any of its claims. Summary  
18 judgment is appropriate.

19 B. Pappas Cannot As A Matter Of Law Prove  
20 Its State Law Tort Claims

21 Plaintiff's state law claims are based on the  
22 allegation that the Pac-10 interfered with its ability to  
23 televise, live, the FSU-OSU and FSU-WSU football games. But  
24 Pappas never had that ability, because there never was an  
25 agreement to such a telecast. The Pac-10 cannot interfere with  
26 a right that never existed.

27 / / /

28 / / /

1                   1.     Plaintiff Cannot Prove That the  
2                             Pac-10 Induced a Breach of Contract

3                   To prove inducing breach of contract, Pappas must  
4 prove:    "(1) a valid and existing contract; (2) the defendant  
5 had knowledge of the contract and intended to induce its breach;  
6 (3) the contract was in fact breached by the other contracting  
7 party; (4) the breach was caused by defendant's wrongful and  
8 unjustified conduct; and (5) plaintiff suffered damages as a  
9 result of the breach.'"   Rader Co. v. Stone, 178 Cal. App. 3d  
10 10, 29-30 (1986) (citation omitted). Pappas cannot clear the  
11 first hurdle, because the contract it says the Pac-10 interfered  
12 with never existed. Every party involved with the negotiations  
13 between FSU and the two Pac-10 schools swears that no one ever  
14 mentioned a live telecast, much less agreed to one. Johnson  
15 Decl. ¶ 2; Gibson Decl. ¶ 2; Corwin Decl. ¶ 2. WSU and OSU  
16 never even considered agreeing to one. Gibson Decl. ¶ 2; Corwin  
17 Decl. ¶ 2. Absent a meeting of the minds on an essential term,  
18 no contract exists. Carlson, Collins, Gordon & Bold v.  
19 Banducci, 257 Cal. App. 2d 212, 222 (1967). This claim fails  
20 for that reason alone.<sup>5</sup>

21                   2.     Pappas Cannot Prove Interference  
22                             with Prospective Economic Advantage

23                   To prove intentional interference with prospective  
24 economic advantage, Pappas must prove: (1) an economic  
25 relationship containing the probability of future benefit;

26 \_\_\_\_\_  
27 <sup>5</sup> Pappas' failure to prove this element also disposes of each  
28 of the others, which revolve around the breach of a non-existent  
contract. Nor can Pappas prove the other elements independently.

1 (2) knowledge by the defendant of the relationship;  
2 (3) intentional acts by the defendant designed to disrupt the  
3 relationship; (4) actual disruption of the relationship; and  
4 (5) proximately caused damages. Buckaloo v. Johnson, 14 Cal. 3d  
5 815, 827 (1975). Pappas cannot prove that claim either, for the  
6 same reason discussed above. To make out its interference  
7 claim, plaintiff must prove as "a threshold requirement" that  
8 'it is reasonably probable that the lost economic advantage  
9 would have been realized but for the defendant's interference.'  
10 Youst v. Longo, 43 Cal. 3d 64, 71 (1987) (emphasis in  
11 original). The profit Pappas claims is that resulting from a  
12 live telecast of the games at issue. However, no such profit  
13 was possible, much less probable, because neither OSU nor WSU  
14 agreed to a live telecast. The only profit Pappas had a  
15 possibility of realizing is that resulting from a delayed  
16 telecast, and Pappas does not allege, nor can it, that the  
17 Pac-10 interfered with that. See Complaint at ¶¶ 94-96. As  
18 with its contractual interference claim, Pappas seeks to recover  
19 a profit it had no chance of obtaining. It may not do so as a  
20 matter of law. Youst, 43 Cal. 3d at 74.

21 Pappas also lacks standing to bring an interference  
22 claim. The Ninth Circuit Court of Appeals reversed a judgment  
23 for plaintiff under closely analogous facts<sup>6</sup> in DeVoto v.  
24 Pacific Fid. Life Ins. Co., 618 F.2d 1340 (9th Cir.), cert.

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25  
26 <sup>6</sup> The facts are closely analogous assuming Pappas' allegations  
27 that there were contracts between FSU and the Pac-10 schools,  
28 which there weren't, and that the Pac-10 induced WSU and OSU to  
breach them, which it didn't. But even under these assumptions,  
Devoto compels dismissal.



1 denied, 449 U.S. 869 (1980). In Devoto, Bankers Mortgage  
2 Company had a contract with American Home Assurance Company  
3 whereby Bankers provided a service to American. In exchange for  
4 bringing the parties together, plaintiffs received a commission  
5 from American each time Bankers provided the service. Id.  
6 at 1343. Thus, like Pappas, plaintiffs had an economic interest  
7 in having the contract performed. Defendant Pacific induced  
8 Bankers to breach its agreement with American, depriving  
9 plaintiffs of their prospective economic gain. Despite the fact  
10 that Pacific "[was] aware of the brokers' business relation and  
11 knew its disruption was substantially certain to follow once the  
12 principal contract with American was disrupted," the Ninth  
13 Circuit found for defendant as a matter of law. Id. at 1347.

14 The Court held that plaintiffs were required to prove  
15 that Pacific had the specific intent to interfere with the  
16 arrangement between Bankers and plaintiffs. The claim failed  
17 because plaintiffs could not prove defendant's "purpose to  
18 injure [them]":

19 The business relation between [plaintiffs]  
20 and American was of no concern to the  
21 defendants. Commissions anticipated by the  
22 broker did not, in any degree, motivate the  
23 defendants' interference with the contract  
24 between Bankers and American. The object of  
25 the interference was the principal contract,  
26 not the brokers' arrangement incidental to  
27 it.

28 Id. at 1349 (emphasis added). Similarly, Pappas alleges, at  
most, that the Pac-10 interfered with contracts (between FSU  
and the Pac-10 schools) to which KMPH's television agreement  
with FSU was "incidental." Even if that were true, it is  
legally insufficient to state a claim. The Pac-10's acts, if